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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Applicant: Toyoshima	Art Unit: 2687
Serial No.: 09/972,183	Examiner: Torres
Filed: October 5, 2001	**50P4257.05**
For: WIRELESS MODULE SECURITY SYSTEM AND METHOD	April 9, 2007 750 B STREET, Suite 3120 San Diego, CA 92101

REPLY BRIEF

Commissioner of Patents and Trademarks

Dear Sir:

This replies to the Examiner's Answer filed almost eleven months after the original Appeal Brief, Appellant will excuse the tardiness of the Answer, indeed with gratitude, for it makes Appellant's case:

> "Helle ***does not suggest that it may be useful for [the] PCMCIA card of the primary reference***", Answer, page 8, lines 19 and 20 (emphasis mine).

Thus do the conferees admit that no specific suggestion exists to combine the references as they have done, yet they persist in the rejection, apparently based on the belief that if the threshold test of analogousness is met, that is all that is needed under the law to establish a *prima facie* case, Answer, page 7, last five lines. Accordingly, it is irrelevant whether the conferees brush off the admitted lack of motivation to combine Helle with Kawashima as proposed on the ground that "the use of Helle is merely for teaching the technique of

using a server to deactivate the wireless module", bottom of page 8 of the Answer; whether the intended use of a reference in a rejection is "mere" or not, when the conferees place on the written record an admission that Helle is at most analogous and decidedly ***fails to suggest*** the proposed combination with the primary reference, the Board is left with little choice but to reverse.

While the case for reversal has been dispositively established by the conferees' admission above, for the sake of completeness Appellant would like to offer the following additional comments. On page 6 of the Answer, lines 2-4, the conferees make another admission favorable to Appellant's case, namely, that Helle, col. 3, lines 44 and 45 indeed permits the phone, after being placed in the secure mode, to nevertheless make certain calls and, thus, not to be "deactivated". But the conferees insist that because the claims do not positively say that "the phone is deactivated even for emergency calls", it is perfectly legal to reject them based on Helle. This is fatuous. If the examiner thought that such an addition to the claims would render them patentable, why then did he never propose it to Appellant as he surely knows he should have done under MPEP §§706(II) and (III)? Plainly, the flawed logic that underpins the rejection has been made in less than good faith.

This is borne out by the ensuing allegation on lines 9-12 of page 6 of the Answer, trying to back in to a definition of "deactivate" by relying on an allegedly well-known FCC regulation. First, no evidence of record has been proferred in support of the allegation; even if true, such a phone remains active, if of limited use. Second and more importantly, the elision into a definition of "deactivate" is improper. No evidence exists that, even if true, a phone which has had its service cut off can still make emergency calls is considered by those of skill in the art to be "deactivated" as the term would be construed in light of the intrinsic evidence, see MPEP §2111.01 (claims must be construed as one skilled in the art would construe them) and Phillips v.

AWH Corp., 415 F.3d 1303 (Fed. Cir. 2005) (en banc) (claims must be construed in light of the intrinsic evidence).

Appellant's further arguments for patentability in the Appeal Brief retain their relevance.

Respectfully submitted,

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